



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, सोमवार, ८ अगस्त, १९९४/१७ अश्विन, १९१६

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-१७१००२, २ अगस्त, १९९४

संख्या ३-१४/९४-ई०एल०एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या ८२/हि० प्र०-वि० स०/७/९४, दिनांक २२ जुलाई, १९९४ तदनुसार ३१ अगस्त, १९१६ (शक), अंग्रेजी रूपान्तर सहित, जिसमें हिमाचल प्रदेश उच्च न्यायालय, शिमला का निर्वाचन अर्जी संख्या ७ वर्ष १९९४ का निर्णय निहित है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,

राजेन्द्र भट्टाचार्य,
वित्तियुक्त एवं सचिव (निर्वाचन) तथा
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

नई दिल्ली,

22 जुलाई, 1994

दिनांक—

31 आषाढ़, 1916, (शक)।

अधिसूचना

संख्या 82/हि0प्र0-वि0प्र0/7/94.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुपरण में, निर्वाचन आयोग 1994 को अर्गी संख्या 7 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 30 जून, 1994 के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश से,

धनश्याम खोहर,

सचिव,

भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

New Delhi,

22nd July, 1994

Dated the —
31st Asadha, 1916 (Saka).

NOTIFICATION

No. 82/HP-LA/7/94.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Judgement dated 30th June, 1994 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 7.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Election Petition No. 7 of 1994 and E. M. P. No. 3 of 1994

Rajinder Zar
Date of decision :

the 30th June, 1994

..Petitioner.

Versus

Manjit Singh Dogra and others

..Respondents.

Coram:

The Hon'ble Mr. Justice : A. L. VAIDYA, J.

Whether approved for reporting ? Yes

For the Appellant(s)/Petitioner(s): Shri S. S. Mittal, Advocate.

For the Respondent(s) : 1 and 3 : S/Shri Om Parkash Sharma and M. S. Chandel, Advocates.

For Respondent No. 2 : Shri R. K. Sharma, Advocate.

A. L. VAIDYA, J. :

The present petitioner, Shri Rajinder Zar, unsuccessfully contested the Himachal Pradesh Legislative Assembly Election from 23—Nadaunta Constituency, which was held on 9th November, 1993 and the result was declared on 28th November, 1993. Respondent No. 1, Shri Manjit Singh Dogra, was the elected candidate, while respondent No. 2, Shri Ram Rattan Sharma, was another defeated candidate. The said election has been challenged through the present election petition preferred under Section 81 of the Representation of the People Act, 1951 (hereinafter to be called as 'the Act') on various grounds. It has been prayed that the election of respondent No. 1 to the Himachal Pradesh Assembly from 28—Nadaunta Constituency on account of corrupt practices by respondents No. 1 and 3 be set aside. It has also been prayed that the Court may order to re-count the total votes cast in the constituency and to make such order as it may deem fit and proper in the circumstances of the case. The full particulars of the corrupt practices, alleged to have been committed by respondents No. 1 and 3, have been detailed in the petition. The election has also been assailed on account of the violation of certain election rules pertaining to the counting of the votes. The detailed grounds, on the basis of which the relief has been prayed for, are not being referred here on the sole ground that the petition is not being disposed of at present on merits but on the point of limitation alone.

The petition was filed before the Registrar of High Court of Himachal Pradesh on 13th January, 1994. The Registrar at the time of presentation of this petition made the following order :—

“13-1-1994 : Present : Shri Mahesh Gupta, Advocate, *vice* Shri S. S. Mittal, learned counsel for the petitioner.

Petitioner is also present in person.

Petitioner with Shri Mahesh Gupta, Advocate came to me at about 1 P.M. for taking permission to deposit the security money on 12-1-1994. I instructed the learned counsel to approach Deputy Registrar (Judicial) for depositing the security money. Shri S. S. Mittal, Advocate, contacted me on telephone on 12-1-1994 at about 7.45 P.M. that he wanted to present the Election Petition. I had shown my inability to entertain the Election Petition at this odd hours as it could only be filed during the office hours as per the High Court Rules and Orders, Volume-V, Ch. 4-GG, page 83.

Today, petitioner with his counsel Shri S. S. Mittal, put in appearance at 10 A.M. and filed the actual Election Petition before me. Needless to say that the time of taking

whether reporters of Local Papers may be allowed to see the Judgement ..Yes

permission for depositing the security money, Election Petition was not presented before me.

Office to check and report today. List the Election Petition before me at 3 P. M."

On that very day, the Registrar passed another order, which runs, as under :—

"13-1-1994 : Present : Petitioner with his counsel Shri S. S. Mittal.

Petitioner alongwith the Election Petition has filed 10 spare copies of the petition and receipt of security deposit bearing No. 283595 A dated 12-1-1994 amounting to Rs. 2000/-. Office to check and report today at 4 P.M."

At the time of scrutiny by the office, various objections were raised and after removing the objections, the petition was again put up before the Registrar on 21-1-1994, who passed the following order :—

"The learned counsel for the petitioner states that he has removed the office objections. As regards objection No. 1, the learned counsel states that he has moved an application under Section 81 read with Section 151 of the Code of Civil Procedure which, he states, that it should be listed before the Hon'ble Court, for orders. Let this petition be also scrutinised and the office to again check up the petition and the E.M.P. and list before the learned Registrar/Registrar (Vigilance) on 31-1-1994 at 12.00 Noon for removing office objection, if any."

Again on 31-1-1994, the petition was put up before the Registrar, who passed the following order :—

"Put up on 8-3-1994. The petitioners should remove the objections(s) by that date."

On 8-3-1994, the order passed by the Registrar is as under:—

"Office objections have been removed. Spare copies of E.M.P. have been filed, duly attested, by the petitioner. The Election Petition be now registered. The factum of its being time-barred be brought to the notice of the Hon'ble Court by the Bench Reader. The file be put up for obtaining orders regarding nomination of an Hon'ble Judge to try this case."

Thus the objection raised by the Registrar pertaining to the limitation, as referred to above, has to be decided by this Court. In so far as the petition being without limitation by one day is concerned, the fact is not being disputed.

In order to explain the delayed filing of the main petition by one day, the petitioner preferred E.M.P. No. 3 of 1994 on 21-1-1994 under Section 81 of the Act read with Section 151 of the Code of Civil Procedure for treating the election petition filed by the petitioner as having been filed within the period of limitation.

* It has been alleged by the petitioner that he had got the petition ready for filing in the Registry of the Court and had deposited the security amount of Rs. 2000/- in the Registry at about 1 P.M. on 12-1-1994 and when, he alongwith his counsel was going to the office of the Registrar for filing the same, he detected some important omissions in the petition and when the defects were pointed out to the counsel he opined that the commissions were material and the petition should be suitably amended. Accordingly, according to the petitioner, the petition was not filed at that time and thereafter the petitioner

came to the office of his counsel and got a part of the petition amended. According to the petitioner, the weather was extremely bad on that day and it was raining and snowfall was expected at any moment and, therefore, because of bad weather stenographer was also not available and someone was arranged and the petition was got re-typed. Thereafter, as per the petitioner, affidavit was got attested and since 20 spare copies were required for filing the petition, the help of xerox machine was obtained and all this process was completed only at about 7.30 P.M. on 12-1-1994.

The petitioner further pleaded that thereafter he wanted to go to the residence of the Registrar for personally presenting the petition before him, but before doing so, he thought it proper to get the permission of the Registrar to go to his residence, and his counsel sought the permission of the Registrar of telephone. The Registrar, Shri R. K. Mahajan, informed that he could entertained the petition only during office hours and that the petition should be presented on the next day. The petitioner further pleaded that the Registrar did not agree to see the petitioner even when it was pointed out to him that, that day was the last day for filing of the petition and that it would be otherwise time-barred on the next day. The petitioner, as such, had no option but to wait till the next morning and the petition was presented before the Registrar on 13-1-1994 at 10 A.M. sharp. It has also been pleaded that the Registry has raised objection on the point of limitation and a reference to election petition rules as framed by the High Court of Punjab and contained in Volume-V, Chapter-4-GG, has been made on the basis of which the election petition was required to be filed during the office hours only.

Through the present E.M.P., it has been prayed that the Rules of the High Court, which limit the presentation of the election petition on the last day during office hours only, were against the provisions of Section 81 of the Act, which put no such fetters on the rights of the person filing the election petition, which otherwise could be filed within 45 days from the date of the election of the returned candidate and on this ground, the election petition should, therefore, be considered to have been filed within limitation in case it was filed till the mid-night of the last day of limitation. It has been specifically stated that any rule making provision to the contrary may be struck down as being void.

Respondents No. 1 and 3 have alone contested this E.M.P. and they raised a couple of preliminary objections. It was pleaded that no application for condonation of delay in presenting the election petition is maintainable either under Section 81 of the Act or under Section 151 of the Code of Civil Procedure or in any other law. It was also alleged that talk of the learned counsel for the petitioner with the Registrar of the High Court on telephone at 7.45 P.M. on 12-1-1994 could not be termed as presentation of the election petition in persons to the competent authority and for all intents and purposes, the election petition was actually presented on 13-1-1994 at 10 A.M. Such presentation was beyond the period of limitation and as a consequence thereof, the petition is liable to be dismissed.

On merits, the allegations made have been specifically denied. The Rules framed by the High Court being alleged to be void, have been pleaded to be valid Rules framed by the High Court under the provisions of the Act and, as such, cannot be struck down on any score whatsoever.

The proposition before this Court is basically of law, especially when, it has been admitted by the petitioner that the petition was actually filed before the Registrar on 13-1-1994 at 10 A.M. Whether under the provisions of any law and that too on the basis of circumstances disclosed by the petitioner even if assumed to be correct, the date of filing of the petition can be deemed to be 12-1-1994? Article 329 (b) of the Constitution of India stresses that no election of the members of Parliament or the State Legislature shall be called in question except by an election petition presented in such a manner as may be provided for

by or under any law made by the appropriate Legislature, but it is important to note that no procedure for presenting an election petition to the High Court has been provided in Part-VI of the Act, though Section 80, comprised in that part, prohibits that no election petition unless presented in accordance with the provisions of Part-VI, shall be called in question. When no manner of presenting an election petition to the High Court is prescribed by the statute or the Rules framed thereunder, then, it is open to the High Court to frame appropriate Rules to discharge its constitutional and statutory duty, namely, trial of the election petition filed before it by the election petitioners. Once an election petition is brought to the High Court, it cannot refuse to entertain the same on the ground that no procedure for presenting the election petition before it has been prescribed by the appropriate Legislature. An election petition, as such, can be presented only to the High Court, and, therefore, it is for the High Court to regulate the presentation and trial of the election petition.

The Punjab High Court had framed the Rules of Procedure and Guidelines in the matter of trial of election petition under Part-VI of the Act. Rule 11 (ii) runs as under :

"(ii) The petition will be presented to the Registrar *within office hours of any working day* and his receipt showing the date and time of filing of the petition shall be obtained. The receipt shall, also, indicate the date on which the petitioner or his Advocate, if any, must appear before the Registrar for removal of formal defects, if any. The said receipt shall be in Form 'A' appended to these rules."

Learned counsel for the respondents submitted that in so far as Himachal Pradesh High Court was concerned, the Rules referred to above, framed by the Punjab High Court will not be applicable, but on the other hand, the Rules made by the High Court of Delhi in regard to election petition under the Representation of the People Act, 1951, *vide* notification No. 21, dated 21-4-1967, published in the Delhi Gazette, Part-II, section I No. 18, dated 18th May, 1967, shall be applicable.

Rule 5 framed by the Delhi High Court, runs as under:—

"5. The election petition alongwith necessary copies *may be presented at any time during the Court hours*. Immediately after it is presented, the date of presentation shall be endorsed thereon, and the petition shall be entered in the special register maintain for the registration of election petitions."

Under the Rules framed by the Punjab High Court, the election petition is required to be presented to the Registrar within office hours on any working day, while in the Delhi Rules, it is to be presented at any time during the Court hours. The main substance of the two Rules remain the same. In one Rule, the time provided is within 'office hours at any working day' and in the other 'during the Court hours'. Admittedly, the petition did not submit the election petition on 12-1-1994 either during the office hours or during court hours. This fact is not disputed by the petitioner.

Even if, on the basis of the plea of the petitioner, the petition was completed only by 7.30 P. M. on 12-1-1994, meaning thereby, the petition had not been duly completed by the petitioner for its presentation during office/court hours on 12-1-1994. Obviously, the presentation of the petition after office/court hours was without limitation, as per the Rules referred to above.

On the factual side, one aspect has been brought to my notice that the petitioner's pleas that because there were certain material omissions, noted in the election petition before the office/court time on 12-1-1994, appear to be after thought in as much as if it was so, the earlier petition prepared, in which some important omissions were detected could have been

filed with the present petition in order to support the bonafides of the petitioner. It has not been so done by the petitioner. What actually were the material omissions detected on 12-1-1994, have also not been pointed out.

The prayer of the petitioner is that the election petition filed on 13-1-1994, should be deemed to have been filed on 12-1-1994, in as much as, the time available legally was upto the mid-night of 12-1-1994 and before that time the petitioner was precluded to prefer and present the petition on the basis of circumstances already referred to above. It has also been contended that the provisions of the rules referred to above, pertaining to the time for presentation of the petition during office/court hours was void and has to be struck down.

Learned counsel for the petitioner contended that Section 113 of the Code of Civil Procedure and Article 228 of the Constitution empowers this Court to deal with such type of matters. I think this argument deserves consideration only for rejection. Neither there is any reference to this Court under Section 113 of the Code of Civil Procedure nor this case comes within the ambit of Article 228 of the Constitution of India, which empowers the High Court to withdraw the case from the subordinate Court where the case was pending which involves a substantial question of law as to the interpretation of the Constitution, the determination of which was necessary for the disposal of the case.

The petitioner's contention that the time fixed under the Rules framed by the High Court referred to above, for presentation of an election petition, even if held to be against the provisions of the Act, it will not help the case of the petitioner at all. Under Rule 5 of the Rules framed by the High Court of Delhi in regard to the election petitions, under the Representation of People Act, 1951, as applicable to Himachal Pradesh, the time fixed for the presentation of the election petitions has been fixed during the court hours.

As per case of the petitioner, the petition was never presented before the Registrar or before the High Court on 12-1-94 personally by the petitioner or through his counsel. There is absolutely no provision under the Act or the Rules framed thereunder or the Rules framed by the High Court for the presentation of such like petitions after seeking permission on telephone.

Under Section 80A of the Act only the Court having jurisdiction to try an election petition shall be the High Court and such jurisdiction shall be exercised ordinarily by a Singh Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose, which only means that initially in case there are more than one Judge in a particular High Court, the Chief Justice has to assign that election petition to any one of the Judges. The Delhi High Court Rules only provided the time for presentation 'to be any time during the court hours'. This presentation, as such, has to be made before the High Court. As the petition is to be assigned by the Chief Justice to any other Judge of the High Court, it can be inferred that the petition is to be presented before the Chief Justice. The Rules framed by the Punjab High Court provided for the presentation of the election petition before the Registrar. Any way the Registrar happens to be the principal officer of the Court, the presentation before him, if made personally by the petitioner will in a way fulfil the requirement of the Act, more so, that of the Rules framed in this behalf.

On 12th January, 1994, when the Registrar on telephone informed the learned counsel for the petitioner, that he cannot entertain the election petition on account of the High Court Rules and Orders, the petitioner, admittedly, did not take any steps, whatsoever, either to go personally to the residence of the Registrar to request him to take the petition and pass orders thereon as he deemed fit and in case of his refusal, the petitioner did not approach the Chief Justice of the High Court on that very evening or that night for the presentation of the petition. Thus, the petitioner's failure, at the first instance, to present the petition personally during the office/court hours, as was the requirement of the Rules, makes the presentation without limitation. Otherwise also, the petitioner did not take any step, whatsoever, to approach the

Registrar personally or other higher authorities for the presentation of the petition on 12th January, 1994, before mid-night, as being claimed by the petitioner to be the time for the limitation period to expire. There is no provision under the Act or the Rules framed thereunder that an election petition actually presented on 13th January, 1994, could, in any circumstance, be deemed to have been presented on 12th January, 1994, more so, on the basis of the explanation being rendered by the petitioner.

The petitioner's explanation for not presenting the petition on 12th January, 1994, does not appeal to reasoning at all. The conduct of the petitioner in not approaching personally the Registrar or the Chief Justice before mid-night that day in order to present the petition personally, speaks for itself for which legal lapses no leniency can be claimed. In this background the respondents' contention that the election petition, actually presented on 13th January, 1994, had not been completed on or before the mid-night of 12th January, 1994, cannot be ignored. Otherwise also no allegation has been made in Election Petition No. 7 of 1994, pertaining to the facts, as were alleged to have happened on 12th January, 1994, which were made the subject matter of E.M.P. No. 3 of 1994, and in that context there was absolutely no occasion for the Registrar to have made references to those facts in his order dated 13th January, 1994, especially when the Registrar was not in a position to observe that it was this very election petition No. 7 of 1994 which was referred to him during telephonic talk. Admittedly, on 12th January, 1994, the present petition was not personally presented before the Registrar during office/court hours or thereafter till mid-night.

Learned counsel for the petitioner has relied upon AIR 1994 Bombay 87, *Ramkishan Onkarnal Agrawal v. State of Maharashtra and others*, wherein it has been held that the word 'day', as per the English Calendar, begins at mid-night and covers a period of 24 hours thereafter. From this ruling a support is being taken that the period of limitation for presentation of the election petition elapsed on 12th January, 1994, at 12 O' Clock mid-night. I think such an interpretation to the provision of the Act and Rules will not be available to the petitioner. The reported case pertained to the designation as to from what time it was to take effect, where no specific provision or rules had been framed and support was taken to interpret the word 'day' from Bombay General Clauses Act. In the present case under reference, there are specific statutory Rules which prohibit the presentation of the election petition after office/court hours. The ratio of the ruling referred to above is not at all applicable. Otherwise also, on factual side, this ruling will not be of any help to the case of the petitioner who had not at all cared to file the election petition on or before mid-night of 12th January, 1994, as discussed above.

Admittedly, section 5 of the Limitation Act has no applicability to the present petition.

Thus, on the basis of the aforesaid discussion, the present E. M. P. cannot be favourably considered and is, accordingly, dismissed.

Election Petition No. 7 of 1994:

The office objection that the presentation of the election petition was without limitation as it was barred by one day, is not only correct but supported by law and circumstances discussed above.

Section 86 of the Act provides that the High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117 of the Act. Section 81 of the Act provides the limitation of 45 days in the presentation of the election petition, which mandatory provision in the present petition has not been complied with and as a consequence thereof the main election petition No. 7 of

1994 is, accordingly, dismissed with costs, which are assessed at Rs. 2000/- (rupees two thousand only), payable by the petitioner to respondents No. 1 and 3. The other respondents shall bear their own costs. The Registry is directed to communicate the substance of this decision to the Election Commission and the Speaker of the Himachal Pradesh Legislative Assembly, and also send to the Election Commission an authenticated copy of this decision in accordance with the provisions of section 103 of the Act.

June 30, 1994 (Is)

By order,

GUANSHYAM KHORAR,
Secretary,
Election Commission of India.